

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: DA VINCI SURGICAL ROBOT ) Lead Case No.:  
ANTITRUST LITIGATION ) 3:21-cv-03825-VC

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

SURGICAL INSTRUMENT SERVICE ) Case No.  
COMPANY, INC., ) 3:21-CV-03496-VC

Plaintiff,

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
UNDER THE PROTECTIVE ORDER  
VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED  
DEPOSITION OF DAN JONES

Thursday, November 10, 2022  
Remotely Testifying from Alexandria, Virginia

Stenographically Reported By:

Hanna Kim, CLR, CSR No. 13083

Job No. 5564633

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UNDER THE PROTECTIVE ORDER, virtual videoconference  
video-recorded deposition of DAN JONES remotely  
testifying from Alexandria, Virginia, on Thursday,  
November 10 beginning at 12:06 p.m., EST, and  
concluding at 2:36 p.m., pursuant to the  
stipulations of counsel thereof, before Hanna Kim,  
CLR, Certified Shorthand Reporter, No. 13083.

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20  
21 Also Present:

22 MICHAEL BARANKOVICH, Videographer

1 object to my question. But you will still need to  
2 answer unless she instructs you not to do so.

3 Do you understand that aspect?

4 A. Yes.

5 Q. Okay. I don't plan on taking too much of  
6 your time today, but if you need a break, let me  
7 know. All I ask is that if there is a question  
8 pending, you please finish your answer before taking  
9 a break.

10 Sounds good?

11 A. Yes.

12 Q. Do you work at Intuitive?

13 (Interruption in audio/video.)

14 THE COURT REPORTER: I'm sorry. Your  
15 audio cut out.

16 BY MR. MAIDA:

17 Q. Do you work at Intuitive?

18 A. Yes.

19 Q. How long have you worked at Intuitive?

20 A. Fourteen and a half years.

21 Q. What's your current position?

22 A. Director of external affairs.

23 Q. How long have you been in that position?

24 A. Twelve years, 13 years.

25 Q. What are your responsibilities in your

1 undergo a Rebotix type process. Is that an okay way  
2 to look at it?

3 A. Yeah. I think there might have been a  
4 leveling off after the first European customers  
5 looked into it. And I don't recall who else was  
6 looking into it there besides customers. Whether  
7 regulatory bodies got involved, I really don't  
8 recall. I wasn't close to that. I think it  
9 actually decreased. And then, when we saw it emerge  
10 in the U.S., it seemed to increase again.

11 Q. When did it emerge in the U.S.?

12 A. I think this Panama Surgery Center  
13 [verbatim] was one of the earliest instances of use.  
14 Again, I don't recall exactly when we detected it.  
15 But 2019 was when it seemed like there were several  
16 hospitals that we were interacting with about this  
17 issue.

18 Q. And about how long, once that started in  
19 2019, did you -- did Intuitive continue to interact  
20 with hospitals about this issue?

21 A. I think even by 2020, the activity  
22 seems -- seemed to have lessened, and then COVID  
23 hit, and I don't recall it being much of an issue  
24 after COVID hit. I -- I don't know. I think it's  
25 now been two years approximately since we've seen

1           And so, that -- that discussion of a  
2       material breach may be a -- an actual breach or a  
3       potential breach; correct?

4           A.     Using --

5           MS. CAHOY:   Objection.

6           THE WITNESS:  -- instruments would be a  
7       breach.

8       BY MR. VAN HOVEN:

9           Q.     Is there any other basis in this letter  
10       for stating that Marin is breaching or potentially  
11       breaching its agreements with Intuitive?

12          MS. CAHOY:   Objection to form.

13          THE WITNESS:  I'd have to reread it that  
14       closely.  Again, and I -- I don't know.  That --  
15       that -- that section is not saying Marin breached.  
16       It is saying use of these adulterated instruments  
17       would constitute a breach.  So if you want to repeat  
18       the question again, I'd have to reread it.  I'm not  
19       a lawyer, a contracts lawyer.  So are you asking if  
20       there's something outside of that section --

21          Q.     I'm asking what would --

22          A.     -- that discusses what would be a  
23       breach -- that discusses what would be a breach?

24          Q.     Yeah, I'm asking as to what would be a  
25       breach.  And -- and one basis that you've stated is

1 using instruments beyond the programmed number of  
2 uses; correct? That's something that would be a  
3 breach?

4 A. Using instruments beyond the programmed  
5 number of uses is a material breach of the  
6 Agreements. So, yes, that would be -- would be --

7 Q. That -- that's one --

8 A. -- a breach.

9 Q. That's one thing in this letter that's  
10 stated as something that would be a breach; correct?

11 A. Yeah, I would agree with that.

12 Q. Is there any -- anything else in this  
13 letter as to an activity of Marin that might be a  
14 breach of its contracts with Intuitive?

15 MS. CAHOY: Objection to form. Outside  
16 the scope.

17 THE WITNESS: I don't know the answer.  
18 I'm not a lawyer, so I don't know whether the  
19 sub-bullets are included in that "using instruments  
20 beyond the programmed number of uses" because that  
21 would also violate the license. And so, I'm not a  
22 lawyer. I don't know whether you want me to -- to  
23 distinguish the three bullets as separate ways that  
24 the contract would be breached, or if they're part  
25 of the overarching introductory paragraph to that



1 electronically.)

2 A. I've clicked on it.

3 Q. Okay. And take a look, let me know when  
4 you're ready to discuss this document.

5 A. (Witness reviews document).

6 Okay.

7 Q. What does this document appear to be?

8 A. It is a similar letter to the previous one  
9 we looked at.

10 Q. And -- and this one's to Banner Health?

11 A. Banner Health in Phoenix, Arizona.

12 Q. Are you familiar with Banner Health?

13 A. I think it's a pretty well known hospital  
14 system in the Phoenix area. I don't know if it's  
15 part of a larger organization. I don't know much  
16 about the account.

17 Q. Would -- would it surprise you to hear  
18 that Banner Health has over 40 Intuitive robots?

19 A. No.

20 Q. About how much does an Intuitive system  
21 cost on its initial purchase?

22 A. It can vary anything -- I -- I haven't  
23 looked at the approved price list recently. But I  
24 think we have systems that start around 700,000.  
25 And systems that -- with various options can be

1 around the \$2 million per system level. You --

2 Q. And is --

3 A. -- you can look up an average sales price  
4 in our SEC reports.

5 Q. Is -- is that purchase typically done as a  
6 capital investment by the hospitals?

7 MS. CAHOY: Objection to form. Outside  
8 the scope.

9 THE WITNESS: As -- as opposed to what?  
10 BY MR. VAN HOVEN:

11 Q. As opposed to a -- a monthly rental.

12 MS. CAHOY: Objection to form.

13 THE WITNESS: I think --

14 MS. CAHOY: Outside the scope.

15 THE WITNESS: I think we report quarterly  
16 the number of -- or proportion of our system deals  
17 that are leases or are outright acquisitions,  
18 purchases by the hospital. If you want to -- if you  
19 want to divide the world into the hospital buying it  
20 up front or paying lease agreements, those are the  
21 two main arrangements.

22 BY MR. VAN HOVEN:

23 Q. I'd like to go to the section of your  
24 contract with Intuitive, within the Banner letter.

25 A. Yes.

1           Q.    You'll see that the first paragraph  
2 mentions two agreements, one that's in parentheses a  
3 sales agreement, and one that's in parentheses a  
4 ULSA.

5                   Do you see that?

6           A.    Mm-hmm.

7           Q.    What is this sales agreement?

8           A.    I'm not sure I've ever seen one, an  
9 actual.

10          Q.    Okay.

11          A.    I imagine it is the terms of the system  
12 purchase or lease. This says -- yeah, this says  
13 "sale." I think the term may cover leases. I don't  
14 know.

15          Q.    And -- and that -- that's for the system,  
16 meaning the robot, the console, and the vision cart?

17                   MS. CAHOY: Objection to form. Outside  
18 the scope.

19                   THE WITNESS: I -- I would think it would  
20 cover. And sometimes those also include some  
21 initial inventory of instruments as well. So  
22 there's -- there's just an initial investment. It  
23 may not just be the system. And also -- and also a  
24 first year of service is usually provided with a  
25 system acquisition whether that's through a --

1 arranged in the lease terms or in the sales terms.

2 BY MR. VAN HOVEN:

3 Q. And in -- in the case of instruments that  
4 might come with the sales agreements, once those  
5 were used, the customer would have to purchase  
6 additional instruments?

7 MS. CAHOY: Objection to form. Outside  
8 the scope.

9 THE WITNESS: Generally, I think that's  
10 how things would work, yes.

11 BY MR. VAN HOVEN:

12 Q. And do you have an understanding of what  
13 the ULSA is?

14 A. It says here it's the use license and  
15 service agreement.

16 Q. Do you have any idea how that fits in with  
17 the sales agreement?

18 MS. CAHOY: Objection to form. Outside  
19 the scope.

20 THE WITNESS: I don't know if they're  
21 simultaneous, if it's separate in some cases, if  
22 they're together in others. I don't know.

23 BY MR. VAN HOVEN:

24 Q. If we go to the second bullet point  
25 there -- and actually, before we go there, we'll

1 note that the -- am I correct that the sales  
2 agreement and that ULSA are collectively referred to  
3 as "the Agreement" in this letter?

4 A. Yeah, it looks like there should be an  
5 open quote, and there's one missing. But it says,  
6 "Each as amended (collectively, 'the Agreement')."   
7 And there's a footnote on it as well.

8 Oh, okay. That's standard legal. Yes,  
9 the footnote goes further to, I think, imply that  
10 those two are collectively called "the Agreement."

11 Q. And the -- I -- I see that there's a  
12 double collectively, but almost -- the -- so that --  
13 and capital A "Agreement" is referring to the  
14 agreement -- to those two agreements together; is  
15 that right?

16 A. Yes.

17 Q. If we go to the second bullet point, could  
18 you take a look at that and let me know when you're  
19 ready to discuss it.

20 A. Okay.

21 Q. It concludes with a statement that  
22 "Intuitive may terminate the Agreement immediately  
23 upon written notice, and any warranties applicable  
24 to the System will become void."

25 Do you see that?

1 A. Yes.

2 Q. I'd -- I'd like to split that up into kind  
3 of two portions.

4 What do you understand "Intuitive may  
5 terminate the Agreement immediately upon written  
6 notice" to mean?

7 MS. CAHOY: Objection to form. And I  
8 would instruct the witness not to answer to the  
9 extent it would reveal privileged information.

10 THE WITNESS: I'm not a lawyer. I  
11 think -- and so I don't know if there's a -- a  
12 period before the other party to -- to, you know,  
13 dispute, but it -- it's -- I think it says the  
14 arrangement that's established by the agreements  
15 would cease.

16 BY MR. VAN HOVEN:

17 Q. That --

18 A. Are we -- are we asking what terminate  
19 means, or -- I don't --

20 Q. Sure.

21 Yeah, I -- what's it mean to terminate the  
22 agreement?

23 A. I think that it's no longer binding for  
24 the two parties to fulfill their obligations.

25 Q. And so, Intuitive would no longer have to

1 fulfill any of its obligation with respect to  
2 Banner's 40 plus robots?

3 MS. CAHOY: Objection to form. Outside  
4 the scope.

5 THE WITNESS: Again, I don't know if the  
6 agreements cover all 40 or the specific system. I  
7 don't know that case.

8 BY MR. VAN HOVEN:

9 Q. But the termination of the agreement is  
10 with respect to systems; right?

11 A. Systems --

12 MS. CAHOY: Objection to form. Outside  
13 the scope.

14 THE WITNESS: I don't know if it is plural  
15 systems in this case. I don't know if it was one  
16 system or more systems that were being covered by  
17 those agreements.

18 BY MR. VAN HOVEN:

19 Q. Right.

20 So -- but whether it's one or more  
21 systems, the agreement is the agreement is for the  
22 system; right?

23 A. I don't know. I was just saying I didn't  
24 know whether it applied to plural systems.

25 Q. But you do know that the agreement